

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERROL JAMES	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-CV-1037
	:	
INTERSTATE CREDIT AND	:	
COLLECTION, INC.	:	

SURRICK, J.

AUGUST 2, 2005

MEMORANDUM & ORDER

Presently before the Court is Defendant Interstate Credit and Collection, Inc.'s Motion Under Federal Rule of Civil Procedure 42(B) For Bifurcation Of The Liability And Damages Issues Into Separate Trials (Doc. No. 52) and Plaintiff Errol James's Opposition To Defendant's Motion For Bifurcation (Doc. No. 54). For the following reasons, Defendant's Motion will be denied.

On April 28, 2005, we granted Summary Judgment for the Defendant on Count II of Plaintiff's Second Amended Complaint alleging a violation of the Fair Credit Reporting Act ("FCRA"). At the same time, we denied Summary Judgment on Count I alleging violation of the Fair Debt Collection Practices Act ("FDCRA"). (Doc. No. 40.) On July 29, 2005, we denied Plaintiff's motion for reconsideration. (Doc. No. 56.)

Defendant contends that bifurcation will promote judicial economy "by limiting the presentation of lengthy evidence which may be wholly irrelevant if the jury does not find a violation of the FDCPA." (Doc. No. 52 at 3.) Defendant asserts that entirely different evidence

will be presented to establish a violation of the FDCPA on the one hand and damages on the other. (*Id.*) Finally, Defendant asserts that bifurcation will avoid prejudice to Defendant because it will avoid the risk of the jury being motivated by sympathy for the Plaintiff. (*Id.* at 3-4.) Plaintiff responds that bifurcation would create significant inconvenience and unduly prolong the trial. (Doc. No. 54 at 3.) Plaintiff proffers the example of witness Frank James, a mortgage broker, who will testify as to “steps that he took to try to get Interstate’s inaccurate reporting removed or explained to the satisfaction of the mortgage lender (liability) and also testify as to the higher cost of the mortgage that his firm arranged (damages).” (*Id.* at 3-4.) Plaintiff argues that “[b]ifurcation would require two closings, two jury charges, two deliberations rather than one.” (*Id.* at 4.) In response to Defendant’s concern about jury sympathy, Plaintiff argues that a routine instruction to the jury to discharge any sympathy, bias or prejudice would resolve this concern. (*Id.*)

Federal Rule of Civil Procedure 42(b) provides

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

Fed. R. Civ. P. 42(b). The Third Circuit has stated that, “separation of issues for trial is not to be routinely ordered.” *Lis v. Robert Packer Hospital*, 579 F.2d 819, 824 (3d Cir. 1978). Rather, “[b]ifurcation of proceedings into separate trials concerning liability and damages is appropriate when ‘the evidence pertinent’ to the two issues is wholly unrelated’ and the evidence relevant to the damages issue could have a prejudicial impact upon the jury’s liability determination.”

Helminski v. Ayerst Labs., 766 F.2d 208, 212 (6th Cir. 1985) (quoting 9. C. Wright & Miller, *Federal Practice & Procedure* § 2390)). Moreover, “the party seeking bifurcation has the burden of demonstrating that judicial economy would be promoted and that no party would be prejudiced by separate trials.” *Middleton, Inc. v. Swisher Int’l Inc.*, No. 03-3908, 2004 WL 792762, at *1 (E.D.Pa. Apr. 8, 2004) (citation omitted).

We find that Defendant has not met its burden of establishing that judicial economy would be promoted or that no party would be prejudiced by bifurcation. Plaintiff correctly points out that while a finding against Plaintiff on liability would obviate the necessity for proof of damages, “such is the case with every civil case in this courthouse.” (Doc. No. 54 at 7.) Judicial economy will be promoted by holding one trial which, as Defendant points out, only concerns Count I of Plaintiff’s Amended Complaint, and which will last for only approximately two or three days. Judicial economy would not be promoted by granting this Motion.

For the foregoing reasons, Defendant’s Motion will be denied.

An appropriate Order follows.

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INTERSTATE CREDIT AND
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CIVIL ACTION

NO. 03-CV-1037

ORDER

AND NOW, this 2nd day of August, 2005, upon consideration of Defendant Interstate Credit And Collection, Inc.'s Motion Under Federal Rule Of Civil Procedure 42(b) For Bifurcation Of The Liability And Damages Issues Into Separate Trials (Doc. No. 52, 03-CV-1037) and Plaintiff's Response thereto, it is ORDERED that Defendant's Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge